STATE OF MICHIGAN

COURT OF APPEALS

CIT TECHNOLOGY FINANCIAL SERVICES, INC.,	UNPUBLISHED July 27, 2010
Plaintiff-Appellee,	
v	No. 288164 Wayne Circuit Court
DETROIT BOARD OF EDUCATION and DETROIT SCHOOL DISTRICT,	LC No. 05-511500-PD
Defendants-Appellants.	

Before: MURRAY, P.J., and DONOFRIO and GLEICHER, JJ.

PER CURIAM.

In this breach of contract action, defendants, Detroit Board of Education and Detroit School District, appeal as of right from the trial court's judgment in favor of plaintiff, CIT Technology Financial Services, Inc. On appeal, defendants argue that the trial court erred when it granted summary disposition in favor of plaintiff because genuine issues of material fact remain regarding the validity of the contracts at issue. Defendants also argue that the trial court erred when it admitted certain testimony and exhibits into evidence at the subsequent damages trial. Because the trial court erred when it granted summary disposition in favor or plaintiff, we reverse and remand.

In 2001 and 2002, Canon Business Solutions-Northeast, Inc. ("Canon") entered into lease agreements for copy equipment and services with 22 schools from the Detroit Public School District. The principals of the schools signed the leases. The lessee name was listed as "THE BOARD OF EDUCATION OF THE CITY OF DETROIT," appended by the name of each respective school. After the leases were signed, corresponding purchase orders and advance payments on each lease were transmitted from the Board of Education Office of Purchasing to Canon.

Plaintiff claims that it subsequently purchased the lease agreements and the equipment that formed the subject of the lease agreements. Plaintiff also claims that defendants began making payments on these agreements, but eventually stopped, leading to this cause of action. Plaintiff filed a complaint against defendants claiming breach of contract, conversion, and account stated, along with an affidavit of account stated. Defendants filed a motion for summary disposition arguing that MCL 380.373(4) precluded the school principals' authority to enter into such lease agreements. Defendants argued that MCL 380.373(4) limits the authority to expend

school district funds to the CEO and his designees. Further, defendants offered an affidavit from the chief contracting officer for the Detroit Public School District averring that, in 2001, the school district's chief executive officer ("CEO") delegated authority to only five other people, not including any school principals, to contract on behalf of the school district.

At a hearing on defendants' motion, the trial court concluded that it was not reasonable to expect Canon to have known that it could not contract with the school principals and, therefore, that the school principals were ostensible agents. The trial court denied defendants' motion for summary disposition.[1] Plaintiff filed an amended complaint alleging that the school principals acted on behalf of defendants as apparent or ostensible agents, consonant with the trial court's reasoning at the hearing.

At trial, the trial court granted summary disposition, *sua sponte*, in favor of plaintiff during the parties' opening statements. The trial court concluded that even if the school principals had acted outside their authority, defendants ratified the transactions by issuing the purchase orders and advance payments. Defendants alleged that plaintiff had not supported its claim of conversion with evidence of ownership of the equipment. The trial court also denied defendants' motion in limine seeking to exclude evidence of the assignment of the leases to plaintiff. Thereafter, the trial court entered judgment in favor of plaintiff.[2] A damages trial was held before a different judge and the trial court entered judgment in favor of plaintiff in the amount of $398,570.45. Defendants appeal as of right.

Defendants first argue that the trial court erred when it declined to grant summary disposition in favor of defendants. On appeal, a decision to grant a motion for summary disposition is reviewed de novo. *Hines v Volkswagen of Am, Inc*, 265 Mich App 432, 437; 695 NW2d 84 (2005). When reviewing a motion for summary disposition under MCR 2.116(C)(10), this Court must consider the record in the same manner as the trial court. *Id*. Any court considering such a motion must consider all the pleadings and the evidence in a light most favorable to the nonmoving party. *Id*. "Summary disposition is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Brown v Brown*, 478 Mich 545, 552; 739 NW2d 313 (2007).

Defendants contend that MCL 380.373(4) grants sole authority to the school district's chief executive officer ("CEO") and his designees to purchase equipment for the schools. MCL 380.373(4) provides:

---

[1] Defendants filed an application for leave to appeal the trial court's decision with this Court. This Court denied defendants' application for failure to persuade the Court of need for immediate review. *CIT Technology Fin Servs, Inc v Detroit Bd of Ed*, unpublished order of the Court of Appeals entered July 28, 2006 (Docket No. 268946).

[2] Once again, defendants filed with this Court an application for leave to appeal this decision. This Court denied defendants' application for failure to persuade the Court of need for immediate review. *CIT Technology Fin Servs, Inc v Detroit Bd of Ed*, unpublished order of the Court of Appeals entered January 7, 2008 (Docket No. 279429).

> (4) Upon appointment of a chief executive officer for a qualifying school district under section 374, all provisions of this act that would otherwise apply to the elected school board of the qualifying school district apply to the chief executive officer; the chief executive officer immediately may exercise all the powers and duties otherwise vested by law in the elected school board of the qualifying school district and in its secretary and treasurer, and all additional powers and duties provided under this part; and the chief executive officer accedes to all the rights, duties, and obligations of the elected school board of the qualifying school district. These powers, rights, duties, and obligations include, but are not limited to, all of the following:
>
> > *(a) Authority over the expenditure of all school district funds, including proceeds from bonded indebtedness and other funds dedicated to capital projects.*
> >
> > (b) Rights and obligations under collective bargaining agreements and employment contracts entered into by the elected school board, except for employment contracts of those employees described in subsection (6).
> >
> > (c) Rights to prosecute and defend litigation.
> >
> > (d) Obligations under any judgments entered against the elected school board.
> >
> > (e) Rights and obligations under statute, rule, and common law.
> >
> > *(f) Authority to delegate any of the chief executive officer's powers and duties to 1 or more designees, with proper supervision by the school reform board.* [Emphasis added.]

The trial court denied defendants' motion on the ground that the school principals were ostensible agents and it was reasonable for Canon to assume that it had the authority to contract.

An ostensible or apparent agency exists where the principal "intentionally or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him." *VanStelle v Macaskill*, 255 Mich App 1, 9; 662 NW2d 41 (2003). The elements of an apparent agency are: 1) the person dealing with the agent must act with a reasonable belief in the agent's authority, 2) this belief must be generated by some act or neglect of the principal, and 3) the person relying on the agent's apparent authority must not be guilty of negligence. *Id*. at 9-10. "Apparent authority must be traceable to the principal and cannot be established by the acts and conduct of the agent." *Echelon Homes, LLC v Carter Lumber Co*, 261 Mich App 424, 430; 683 NW2d 171 (2004), rev'd in part on other grounds 472 Mich 192 (2005). Plaintiff has not provided any evidence to support the contention that it was defendants' act or neglect that gave Canon the belief that the school principals possessed the requisite authority to contract.

In the alternative, defendants argue that it was not reasonable for Canon to assume the school principals possessed the requisite authority to contract by operation of MCL 380.373(4). On the contrary, MCL 380.373(4) grants the CEO "authority *over* the expenditure of all school

district funds." MCL 380.373(4)(a) (emphasis added). It is not clear that "authority over" expenditures restricts the authority to make any expenditure within the school district to one person or a handful of designees, as asserted by defendants. Rather, it simply grants the authority to supervise and manage school district expenditures. While it is not clear that there are facts in the record to support the trial court's conclusion that the school principals were ostensible agents, the trial court did not err when it denied defendants' motion for summary disposition on the ground that MCL 380.373(4) precludes plaintiff's recovery.

Defendants next argue that the trial court erred in granting summary disposition in favor of plaintiff because defendants ratified the agreements, regardless of whether the school principals possessed the authority to enter into them. "When an agent purporting to act for his principal exceeds his actual or apparent authority, the act of the agent still may bind the principal if he ratifies it." *Echelon Homes, LLC*, 261 Mich App at 431, quoting *David v Serges*, 373 Mich 442, 443-444; 129 NW2d 882 (1964). The principal can ratify an agreement by electing to treat the purported agent's actions as authorized or by acting in a way that is justifiable only if the principal considered the acts authorized. *Id*. at 432. Such action could take the form of a principal accepting the benefits of an agreement "with knowledge of the material facts." *Id*.; *Langel v Boscaglia*, 330 Mich 655, 659; 48 NW2d 119 (1951).

Defendants contend that the purchase orders and payments flowing from the agreements do not constitute ratification in this case because the Office of Purchasing lacked "knowledge of the material facts" of the agreements when they were issued. Defendants argue specifically that its employees had no knowledge that "there had been a lease agreement entered without proper authority." Plaintiff counters that because defendants knew the terms of the agreements, they had all the material facts.

After reviewing the record, we conclude that a genuine issue of material fact regarding whether defendants had knowledge of the material facts of the agreements remains. The trial court concluded that the advance payments constituted acknowledgement of the agreements and, thus, ratification of the agreements. However, the material facts surrounding the agreements in this case constitute not only the existence and terms of the agreements, but also the fact that school principals signed the agreements. See *Langel*, 330 Mich at 659-660 (material facts include whether principal knew purported agent had acted on his behalf). Importantly, we are unable to find evidence on the record elucidating what information the Office of Purchasing had when it issued the payments and purchase orders. If the employees of the office saw the lease agreements, with the school principals' signatures, this would constitute knowledge of the material facts. However, if the Office of Purchasing received only an invoice for payment from Canon, it is possible that this would constitute insufficient knowledge of the material facts. The trial court erred when it granted summary disposition in favor of plaintiff on the ground that defendants had ratified the agreements as a matter of law.

Defendants next argue that the trial court erred when it granted summary disposition in favor of plaintiff on plaintiff's counts of conversion because plaintiff had not demonstrated that it owned the equipment leased to the schools. They argue that plaintiffs only presented an assignment and bill of sale with respect to six of the 22 lease agreements between Canon and the schools. Conversion is defined as:

> any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein. In general, it is viewed as an intentional tort in the sense that the converter's actions are wilful, although the tort can be committed unwittingly if unaware of the plaintiff's outstanding property interest. [*Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992) (internal footnote omitted).]

Defendants presented to the trial court a packet of paperwork, purporting to come from plaintiff, corresponding to each of 22 lease agreements.[3] Within each packet is a copy of the lease agreement, a "booking sheet," an invoice, the purchase order, in addition to other related paperwork. In Exhibits 2 through 7, there is also an assignment and bill of sale ("assignment"). Each assignment identifies as the subject of the agreement a lease agreement between Canon and defendants and the equipment that is the subject of that lease agreement. The assignment specifies a price that corresponds to the price of the attached invoice. And, each assignment specifies that the agreement is being assigned to plaintiff. Item 2 of each assignment says: "Equipment Description. See Exhibit B." Exhibit B, attached to the assignment, is blank, however. Further, Exhibit A of the assignment agreement says, "Attach full copy of each lease agreement here," but there is no attachment. Rather, the agreement is pre-appended to the assignment in the packet.

Plaintiff contends on appeal that defendants had all 22 exhibits in their possession before trial but "did not know how to read the information" and "separated the assignments from the lease agreements." Our review of exhibits 1 and 8 through 22, presented by defendants, reveals no additional assignments, however. The only evidence on the record are the 22 exhibits presented by defendants and which defendants claim they received from plaintiff. Plaintiff has not filed a different version of the exhibits but merely claims defendants have modified the information it gave them. Nevertheless, the only evidence on the record are the exhibits presented at trial by defendants. There is no evidence from which to conclude that plaintiff purchased the equipment from 16 of the 22 lease agreements by Canon. On this record, we must conclude that the trial court erred in granting summary disposition in favor of plaintiff with respect to these 16 counts of conversion.

Defendants also argue that the trial court erred in granting summary disposition in favor of plaintiff with respect to the claim of an account stated. "The creation of an account stated requires the assent of both parties to the account. If an account stated exists, an unanswered affidavit . . . creates a prima facie case that the party failing to respond owes the other party the amount stated." *Echelon Homes, LLC*, 261 Mich App at 435 (internal citation omitted); see MCL 600.2145. Plaintiff filed an affidavit of account stated with its complaint. Defendants filed a countervailing affidavit with their answer stating that defendants "dispute[] the facts contained in the Affidavit of Account Stated attached to plaintiff's complaint," without further detail or explanation. The issue presented is whether defendants' bare bones affidavit is sufficient to rebut the prima facie case raised by plaintiff's affidavit.

---

[3] The exhibits were subsequently entered into evidence by plaintiff at the damages trial.

Defendants' affidavit does not raise any questions of material fact. See *Kaunitz v Wheeler*, 344 Mich 181, 185-186; 73 NW2d 263 (1955) (countervailing affidavits create question of fact precluding summary disposition). Nevertheless, MCL 600.2145 only requires that a defendant attach an affidavit to his answer "denying the [account stated.]"[4] Defendants' affidavit denies the claims in plaintiff's affidavit. Therefore, there is no prima facie case of an account stated. Further, there remains a genuine issue of material fact regarding the existence of the account stated because defendants' denial is evidence of no mutual agreement regarding the amount due. *Kaunitz*, 344 Mich at 185.

Finally, defendants argue on appeal that the trial court improperly admitted certain testimony and exhibits into evidence during the damages trial that followed summary disposition. Because we conclude that granting summary disposition in favor of plaintiff was not proper, we need not address these issues.

Reversed and remanded. We do not retain jurisdiction. Defendants, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher

[4] MCL 600.2145 provides in pertinent part "In all actions brought in any of the courts of this state, to recover the amount due on an open account or upon an account stated, if the plaintiff or someone in his behalf makes an affidavit of the amount due, as near as he can estimate the same, over and above all legal counterclaims and annexes thereto a copy of said account, and cause a copy of said affidavit and account to be served upon the defendant, with a copy of the complaint filed in the cause or with the process by which such action is commenced, *such affidavit shall be deemed prima facie evidence of such indebtedness, unless the defendant with his answer, by himself or agent, makes an affidavit and serves a copy thereof on the plaintiff or his attorney, denying the same*." (Emphasis added.)